WCB – Alberta

# Copy of Accident Report –

## Discussion Paper

**November 22, 2002**

WCB Workers' Compensation Board Alberta

## Introduction

Penalties are under review at the Workers Compensation Board – Alberta (WCB). With the enactment of Bill 26, the authority to levy penalties has been brought into today's economic reality. Under old legislation, the maximum fine the WCB could levy was $500 for each day or part of a day on which the contraventions occurred. With changes due to Bill 26, the maximum fine is now $25,000 for each contravention or for each day or part of a day on which the contravention occurs and continues. See Appendix A for section 152.1 of the Worker's Compensation Act (Act).

Over the last decade, our use of financial penalties has been limited. Our preferred approach is to work with employers to demonstrate business value and achieve voluntary compliance. Unfortunately, there are a group of employers who do not respond to this approach and penalties are a means to change employer behavior and encourage greater accountability of employer responsibilities.

Sharing our implementation plan for our new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. This discussion paper puts forth our proposed penalty structure for failure to provide a copy of the accident report and provides opportunity for feedback.

## Copy of Accident Report

Section 33(1) of the Act requires that employers keep accurate records and provide a copy of the accident record to the injured worker (see Appendix A for detailed section of the Act). We are not aware of how significant an impact this requirement will be for employers. It is clear, however, that this practice benefits both workers and employers. Having documented evidence of injury serves as useful reference particularly in identifying latent disease or injury.

Claims auditors continue to conduct claims audits to examine employer compliance to legislated requirements and work with employers to achieve compliance. The July 2002 edition of the "*WCB Worker Handbook*" (page 10) has also been updated to inform employers of their responsibilities in this regard. This handbook is mailed to injured workers, new employers and is also available on-line on the WCB website.

Achieving compliance will be a challenge for the WCB given that we do not have a tangible process to monitor whether or not employers are providing injured workers with copies of accident reports. The only way the WCB will know is through claims audit results and when advised directly by workers.

As a result, the WCB will introduce an education program with a focus on informing employers of the value in recording incidents involving even minor injuries to employees

and providing employees with copies of these reports. For those employers who consistently neglect their responsibility, we will consider levying a moderate penalty (of no less than $100 per incident) to motivate compliance. The WCB will rely on stakeholder input to determine an appropriate methodology for this penalty program.

## Details of Penalty Program

As already mentioned, we recommend a more aggressive education approach as a first step. The following are some suggestions:

- A stronger focus on informing employers of this responsibility and potential penalties in the Employer Handbook and other publications such as "*Work-related injuries and the WCB – What You Need to Know*"
- More emphasis on educating employers in WCB seminars and workshops

For those employers who consistently neglect their responsibility, we suggest levying a moderate penalty. This penalty would be billed on their monthly statement along with other billing items. The monthly statement will detail specific information regarding the penalty levied, i.e. claim number, amount of fine, etc.

As with other decisions made at the WCB, employers will have an opportunity to request a review of any penalties levied on their accounts. They would follow the normal dispute resolution process with initial contact to a supervisor or manager followed by review at the Assessment Review Committee. The final level of appeal is the Appeals Commission.

## Roll-out Strategy

Communication regarding the new penalty program would focus on informing employers, workers and WCB staff. Safety/trade associations and government will also be advised. The primary vehicles for communication may include:

- Stakeholder workshops
- Training sessions for staff
- WCB seminars and workshops
- Direct communication to employers by field staff (such as Claims Auditors and Account Managers)
- WCB website and updates to publications and fact sheets
- Articles in "Insight" publication

Although "first offenders" may not be penalized, general communication efforts will help them become aware of their requirements and the financial consequences for continuing to neglect their responsibilities. The advantage is that employers will have an

opportunity to identify inefficiencies and adjust their behaviours prior to incurring penalties.

While general communication of Act changes is already occurring, details of the penalty program will commence in late 2002 and implementation is planned for early 2003.

## Penalty Escalation

Some employers already engage in the "best practice" of providing workers with copies of accident reports. Since it is in the best interests of both workers and employers, we do not anticipate a great amount of resistance to this concept.

As such, the combination of an education process and penalty program should be effective in motivating a change in behaviour. For all employers, this penalty is preventable and within their means to control.

We recommend evaluating results at the end of 2003. If specific employers consistently refuse to provide copies of accident reports to injured workers, the program could add a provision for penalty escalation. While in practice escalation does not seem likely, proposal for escalation may include raising the penalty amount per incident. To establish how we will build on the basic penalty program, we will gather input from stakeholders in late 2003 or early 2004.

## Stakeholder Feedback

Sharing our plans for the new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. Information on the general administrative penalty program has already been posted on our website to initiate the process. A stakeholder session introducing the general topic of penalties was also conducted on November 6, 2002. Two additional workshops, one in Edmonton and one in Calgary, are planned for early December. The focus of the workshops will be to present the WCB model for a penalty program and gather feedback from stakeholders. Once stakeholder views have been considered, implementation of the program will commence.

## Next Steps

- Collection of stakeholder feedback – December 2002
- WCB approval of penalty program – January 2003
- Communication of penalty program – First quarter 2003
- Implementation of penalty program – First quarter 2003

## Appendix A – Sections of Workers' Compensation Act (Bill 26 changes effective January 1, 2003)

### Section 152.1:

**Administrative penalty**

**152.1(1)** Where the Board is of the opinion that a person has contravened section 19, 33(1), 87, 103, 105, 106, 108, 109, 110, 138, 139, 140, 140.1, 145, 147(3) or 151.1, the Board may by notice in writing given to that person require that person to pay to the Board within the time specified in the notice an administrative penalty in respect of each contravention in the amount set out in the notice.

**(2)** A person who contravenes a provision referred to in subsection (1) is liable for the administrative penalty for each day or part of a day on which the contravention occurs and continues.

**(3)** An administrative penalty may not exceed $25 000
(a) for each contravention, or
(b) for each day or part of a day on which the contravention occurs and continues,
as the case may be.

**(4)** A notice of administrative penalty may not be issued more than 2 years after the later of
(a) the date on which the contravention to which the notice relates occurred, and
(b) the date on which evidence of the contravention first came to the notice of the Board.

### Section 33(1):

**Notice by employer**

**33(1)** An employer who receives notice of an accident under section 32 or otherwise acquires knowledge of an accident or of an allegation of an accident
(a) shall forthwith record the details of the accident as required by the regulations and forthwith provide a copy of that record to the worker,
(b) shall, if the accident disables or is likely to disable the worker for more than the day of the accident,
(i) give notice of the accident to the Board within 72 hours after acquiring knowledge of the accident or the allegation, and at the same time give a copy of that notice to the worker, and
(ii) if the employer acquires knowledge that the worker has returned to work or is able to return to work, give notice of that fact to the Board within 24 hours after the employer acquires knowledge of it,

(c) shall, if the accident is one to which section 32(1)(b) applies, except in those cases where only first aid, as determined by the Board, is rendered, give notice of the accident to the Board within 72 hours after the employer acquires knowledge of the accident or the allegation, and
(d) shall provide the Board with any other information it requires in connection with the accident

**(2)** If an employer or a person who, in the opinion of the Board, is or might be an employer fails to
(a) provide any information as required by this section, or
(b) reply to the Board's request for information within 30 calendar days after the date of that request,
the Board may investigate the accident and may charge the costs of the investigation to the employer or other person.